

1 for identification as Bureau
2 Exhibit 330, was rejected from
3 evidence.)

4 MR. SCHAUBLE: Yes, Your Honor, the Bureau moves
5 Exhibit 331 into evidence.

6 CHIEF JUDGE CHACKIN: Any objection to 331?

7 MR. SHAINIS: Yes, Your Honor, I don't see any
8 relevance.

9 CHIEF JUDGE CHACKIN: What is the relevance of
10 331?

11 MR. SCHAUBLE: Your Honor, 331 is applications
12 filed in the name of Marc Sobel. The record will reflect
13 that Mr. Kay had the primary responsibility for preparing
14 these. I think they're relevant and through testimony we
15 can establish these are relevant to the issues of whether
16 Mr. Kay, contrary to his claim, had an interest in Mr.
17 Sobel's stations or licenses.

18 CHIEF JUDGE CHACKIN: Is this being offered under
19 the abuse of process issue?

20 MR. SCHAUBLE: Under the misrepresentation issue,
21 Your Honor.

22 CHIEF JUDGE CHACKIN: Misrepresentation issue.

23 MR. KNOWLES-KELLETT: Kay said I have no interest
24 in any of Sobel's licenses.

25 CHIEF JUDGE CHACKIN: So, how does this exhibit

1 prove or not prove that fact?

2 MR. SCHAUBLE: Your Honor, I believe we would show
3 through testimony, the testimony is needed to tie this in,
4 but these applications were, in fact, prepared by Mr. Kay,
5 then his involvement is relevant to the question of whether
6 he had an interest in these stations or licensing.

7 MR. SHAINIS: Your Honor, I don't believe --

8 CHIEF JUDGE CHACKIN: I thought there was such
9 testimony in the record already, isn't there? Didn't Mr.
10 Sobel testify to these things?

11 MR. KNOWLES-KELLETT: I believe both Kay and Sobel
12 testified that Kay prepared these applications.

13 CHIEF JUDGE CHACKIN: Then, why do we need this
14 material?

15 MR. SCHAUBLE: Your Honor, this was -- this
16 exhibit was one of the exhibits entered into evidence in the
17 Sobel proceeding.

18 MR. KELLER: Your index indicates, we're on 331
19 now, your index indicates that Kay and Sobel or Kay and Marc
20 Sobel are sponsoring witnesses for this. Now, I'm not sure
21 I'm clear. Are we offering for the redacted version of the
22 transcript that you're going to submit by December 7, and I
23 think you stated earlier, you're not going to further
24 examine these people about those issues that are already in
25 the transcript, but this would indicate that you nonetheless

1 intend to question them about the exhibits that are in the
2 other proceeding? Or, is the record going to speak for
3 itself?

4 MR. SCHAUBLE: I think this goes together with the
5 testimony that we intend to rely upon. In other words,
6 there's references in the transcript to the underlying
7 exhibits. You know, in order to make sure we had a full and
8 complete record, we wanted not only testimony, but also
9 certain underlying documents, to make sure that in this
10 proceeding we had the information we need.

11 (Pause.)

12 MR. SCHAUBLE: Your Honor, perhaps we can defer a
13 ruling on this, so the Bureau can take a look at the
14 exhibit, at the transcript, and determine exactly what
15 portions -- depending on exactly what portions we rely on.

16 MR. KNOWLES-KELLETT: The transcript doesn't make
17 sense, Your Honor, without the underlying documents. To the
18 extent the underlying documents relate to portions of the
19 transcript that are not going to have to be in the record,
20 we're going to withdraw them. So, it might be appropriate -
21 -

22 CHIEF JUDGE CHACKIN: I'll defer a ruling on 331.
23 Ruling deferred.

24 MR. KELLER: Well, that same concept would apply
25 to the next several exhibits, would it not?

1 CHIEF JUDGE CHACKIN: What was that?

2 MR. SCHAUBLE: Your Honor, we were discussing the
3 next several exhibits. Your Honor, perhaps we should take
4 Exhibits 332 and 333 together, move those exhibits into
5 evidence. Exhibit 332 is an exhibit drafted by --

6 CHIEF JUDGE CHACKIN: Let's go off the record.

7 (Discussion held off the record.)

8 MR. SCHAUBLE: Your Honor, with respect to 332 and
9 333, I believe the testimony in the Sobel proceeding will
10 establish that, although this letter is signed by Marc
11 Sobel, a letter to the FCC, it is, in fact, prepared by Mr.
12 Kay and pages four through seven of Exhibit 332, you'll see
13 a reference to certain invoices where certain information is
14 masked out in the invoices.

15 CHIEF JUDGE CHACKIN: Yes.

16 MR. SCHAUBLE: The record will show that what's
17 masked out is the address of Lucky's Two Way Radio, which is
18 Mr. Kay's company. If you turn to 333, those are unredacted
19 copies of the same invoices, which show what was, in fact,
20 masked out, and we believe this evidence is relevant to the
21 misrepresentation issue, because we believe this shows that
22 Mr. Kay had an intent or a motive in order to conceal his
23 relationship with Mr. Sobel to the Commission, because he
24 made this decision here to, when sending information to the
25 Commission, he made the specific decision to mask out his

1 address on these invoices when they were sent to the
2 Commission.

3 CHIEF JUDGE CHACKIN: So, this is a
4 misrepresentation issue. You say this relates to the
5 existing misrepresentations put in by Judge Sippel?

6 MR. SCHAUBLE: Yes, to determine whether Kay
7 misrepresented facts or lacked candor, correct.

8 CHIEF JUDGE CHACKIN: Concerning the nature of --

9 MR. SCHAUBLE: His relationship with Mr. Sobel.

10 CHIEF JUDGE CHACKIN: Any objection?

11 MR. SHAINIS: Your Honor, I don't believe this
12 has any relevance at all to the misrepresentation issue.
13 Because there is a redaction does not show
14 misrepresentation. But, and I don't believe the Bureau has
15 come even close to this document --

16 MR. SCHAUBLE: Your Honor, we believe that these
17 documents evidence an intent by Mr. Kay to try to conceal
18 his relationship with Mr. Sobel.

19 MR. SHAINIS: His relationship with Mr. Sobel is
20 not the issue. The issue is misrepresentation, and to show
21 misrepresentation, the cases are quite clear in these
22 documents. They're not showing misrepresentation.

23 MR. KNOWLES-KELLETT: They show an intent to
24 conceal the relationship. Later, he blatantly
25 misrepresented the relationship.

1 CHIEF JUDGE CHACKIN: What do you mean they show
2 an intent to conceal the relationship? I assume that
3 testimony was given. They testified forthrightly as to the
4 nature of the marketing agreement that existed between Sobel
5 and Kay.

6 Now, the Judge concluded that that marketing
7 agreement constituted control, and on that basis,
8 determined, well, I didn't read his initial decision,
9 determined that Mr. Sobel was less than honest in his
10 testimony that there was no ownership interest, that there
11 was no interest -- I shouldn't say ownership -- there was no
12 interest. When he testified that there was no ownership
13 interest.

14 MR. SCHAUBLE: It wasn't as to the testimony, Your
15 Honor. It went back to, at the beginning of this
16 proceeding, the Kay proceeding. Kay filed a pleading before
17 Judge Sippel that had an affidavit attached to it from Marc
18 Sobel. The pleading, in the pleading, it says see affidavit
19 attached by Marc Sobel, "I have no interest in any of
20 Sobel's stations or licenses."

21 CHIEF JUDGE CHACKIN: That's correct, I
22 understand. But, what does this have to do with it?

23 MR. SCHAUBLE: Okay, the misrep issue goes to
24 whether or not that was, he was intentionally deceiving the
25 Commission about his relationship with Marc Sobel.

1 CHIEF JUDGE CHACKIN: I understand that. Now,
2 what is this identification of this --

3 MR. SCHAUBLE: The testimony shows that Sobel was
4 asked for loading records. Sobel submitted loading records
5 which Kay prepared and Kay redacted his address as the
6 billing address for Sobel. That, we say, is an intent to
7 conceal from the Commission his relationship with Marc
8 Sobel, which was further done when he submitted this
9 affidavit, the attestation and pleadings to Judge Sippel,
10 saying that I have no interest in Sobel's licenses.

11 MR. KELLER: Your Honor --

12 MR. SHAINIS: The operative word is interest, and
13 that's really what this is going to come down to.

14 MR. SCHAUBLE: It's further than that, Your Honor.

15 MR. SHAINIS: It's really going to come down to
16 what is meant by interest and the fact that things are
17 redacted, I can tell you, you submit things to the
18 Commission redacted all the time, in other contexts, because
19 of proprietary information, because you don't want
20 competitors to find out. There's any number of reasons.

21 MR. KELLER: That's correct.

22 MR. SHAINIS: Which has nothing to do with
23 misrepresentation. The mere fact that it's redacted does
24 not establish misrepresentation or any relevance and
25 misrepresentation.

1 MR. KELLER: And, I believe the record also
2 reflects in the proceeding, Your Honor, that the information
3 that was redacted was not in any way relevant to the request
4 that was being made of the Commission, because I think the
5 law is also pretty clear that a finding of
6 misrepresentation, a finding of potential misrepresentation,
7 requires some showing of a motive to misrepresent.

8 There would have been no motive for Kay to deceive
9 the Commission or Mr. Sobel, for that matter, by withholding
10 information that was not relevant. Had the Bureau found
11 this information to be relevant or curious, they could
12 certainly have asked for additional information, but the
13 record also reflects that, having received this redacted
14 information, they then proceeded to grant the underlying
15 applications, which indicate that even at the time the
16 Commission processed the application in question, they did
17 not consider the redacted information to be relevant.

18 CHIEF JUDGE CHACKIN: All right, apparently this
19 material is dated 1993.

20 MR. SCHAUBLE: Correct, Your Honor.

21 CHIEF JUDGE CHACKIN: Now, 1993, the material was
22 submitted in connection with something the Commission
23 requested of Mr. Kay.

24 MR. KELLER: No, Mr. Sobel.

25 CHIEF JUDGE CHACKIN: Mr. Sobel. Now, is there

1 anything -- what was the question that the Commission
2 requested of Mr. Sobel?

3 MR. KNOWLES-KELLETT: Basically, I believe, Your
4 Honor, that this and subsequent exhibits were all, Mr.
5 Sobel, could you verify your loading so that we could grant
6 you the application.

7 CHIEF JUDGE CHACKIN: So, what does this have to
8 do with the misrepresentation issue?

9 MR. SCHAUBLE: Your Honor, maybe I can put it this
10 way.

11 CHIEF JUDGE CHACKIN: He answered the question the
12 Commission asked. He redacted information concerning --

13 MR. KNOWLES-KELLETT: His relationship with Kay.

14 CHIEF JUDGE CHACKIN: But, that was not asked of
15 him.

16 MR. KNOWLES-KELLETT: Right.

17 CHIEF JUDGE CHACKIN: If that was not asked of
18 him, how could that be a basis for a later misrepresentation
19 issue of an affidavit written five years later?

20 MR. KNOWLES-KELLETT: Not five years later.

21 CHIEF JUDGE CHACKIN: How many years later?

22 MR. KNOWLES-KELLETT: The following year.

23 CHIEF JUDGE CHACKIN: The following year. I don't
24 care if it was the following month. What does one have to
25 do with the other? Where is the connection?

1 MR. SCHAUBLE: Your Honor, suppose, for example,
2 that, you know, suppose in this letter, for whatever reason,
3 Mr. Kay had gone out of his way to explain his relationship
4 with Mr. Sobel. You'd certainly be hearing an argument from
5 Mr. Kay, look, in '95, there is no misrep or lack of candor
6 to the Commission, because three months ago, I told this all
7 to the Commission anyway, and therefore, you can't find any
8 intent to deceive.

9 Bear with me, because the converse of the
10 situation, the fact that he went out of his way to conceal
11 the fact that his address was on these invoices, while not
12 conclusive evidence, I think is relevant to Mr. Kay's state
13 of mind, which is, after all, the state of mind is very
14 relevant under misrepresentation, lack of candor issue.

15 MR. KELLER: May I correct --

16 CHIEF JUDGE CHACKIN: This was sent to Mr. Sobel.
17 This is Mr. Sobel who responded to the Commission.

18 MR. SCHAUBLE: The record will reflect that it
19 was, in fact, Mr. Kay who prepared this, although Mr. Sobel
20 signed it.

21 MR. KNOWLES-KELLETT: Kay redacted it.

22 CHIEF JUDGE CHACKIN: Well, I'm going to reject
23 it. I don't see how it's relevant to the misrepresentation
24 issue added by the Judge. I'm not going to receive Bureau
25 Exhibit 332. It's rejected.

1 What's the next exhibit?

2 (The document referred to,
3 having been previously marked
4 for identification as Bureau
5 Exhibit 332, was rejected from
6 evidence.)

7 MR. SCHAUBLE: Your Honor, Exhibits 333 to 337, I
8 offer them into evidence. I will say, these are largely
9 along the same line as Exhibit 332, and given these exhibits
10 were offered into evidence in the Sobel proceeding, I'd
11 offer these exhibits into evidence at this time.

12 MR. KELLER: These are the same objections as to
13 332 and 333, Your Honor.

14 CHIEF JUDGE CHACKIN: I'm going to reject these
15 exhibits, as well.

16 MR. SHAINIS: You're rejecting 332 to 337?

17 CHIEF JUDGE CHACKIN: That's correct, 332 to 337
18 is rejected.

19 (The document referred to,
20 having been previously marked
21 for identification as Bureau
22 Exhibits 333 through 337, were
23 received in evidence.)

24 MR. SCHAUBLE: Your Honor, with respect to 338, we
25 need to review the transcript. Depending on what portions

1 of the transcript we designate, it may not be necessary for
2 us to offer this into evidence, so we ask that Your Honor
3 defer ruling.

4 CHIEF JUDGE CHACKIN: All right, ruling will be
5 deferred.

6 MR. SCHAUBLE: Your Honor, at this time, we offer
7 into evidence Bureau Exhibit 339, the original management
8 agreement between Kay and Marc Sobel.

9 CHIEF JUDGE CHACKIN: Any objection?

10 MR. KELLER: No objection.

11 CHIEF JUDGE CHACKIN: Bureau Exhibit 339 is
12 received.

13 (The document referred to,
14 having been previously marked
15 for identification as Bureau
16 Exhibit 339, was received in
17 evidence.)

18 MR. SCHAUBLE: Your Honor, at this time, I offer
19 into evidence Bureau Exhibit 340.

20 CHIEF JUDGE CHACKIN: Any objection?

21 MR. KELLER: No objection.

22 CHIEF JUDGE CHACKIN: Bureau Exhibit 340 is
23 received.

24 (The document referred to,
25 having been previously marked

1 for identification as Bureau
2 Exhibit 340, was received in
3 evidence.)

4 MR. SCHAUBLE: Your Honor, at this time I offer
5 into evidence Bureau Exhibit 341.

6 MR. KELLER: No objection.

7 CHIEF JUDGE CHACKIN: Bureau Exhibit 341 is
8 received.

9 (The document referred to,
10 having been previously marked
11 for identification as Bureau
12 Exhibit 341, was received in
13 evidence.)

14 MR. SCHAUBLE: Your Honor, at this time, we offer
15 into evidence Bureau Exhibit 342 and I would note in the
16 last, although it is a pleading, Your Honor, again, on the
17 last page of the exhibit, there's an affidavit from Mr. Kay,
18 attesting that the foregoing pleading is true and correct.

19 MR. KNOWLES-KELLETT: We're offering it as an
20 admission.

21 CHIEF JUDGE CHACKIN: Any objection?

22 MR. KELLER: Your Honor, we object to the scope of
23 the exhibit. It's a fairly long pleading dealing with a lot
24 of issues. We would ask the Bureau pare it down just to the
25 portion that is relevant to this proceeding. I believe a

1 very small portion of this pleading is relevant to this
2 proceeding.

3 We have no objection to the affidavit, excuse me,
4 affidavits, but beyond that, there's like a 16-page
5 pleading, which I think probably only a few paragraphs have
6 any bearing on this case.

7 MR. KNOWLES-KELLETT: Your Honor, this is a
8 pleading Kay filed in this case.

9 CHIEF JUDGE CHACKIN: That may be so, but what's
10 relevant? The entire exhibit or just portions of the
11 exhibit?

12 MR. SCHAUBLE: We can try by December 7 to also
13 designate the appropriate portions of this. I don't think
14 that -- they could object later to the relevancy.

15 CHIEF JUDGE CHACKIN: All right, if you want to
16 offer portions of exhibits under different issues, you can
17 delineate which issues you're offering. How are you going
18 to know what the justification for receiving it is? I don't
19 know. There may be portions here that you may feel it's
20 relevant to this 308 issue. I don't know, but the parties
21 have a right to know which you intend to rely on, so I'll
22 defer a ruling and you can also notify by the 7th as to
23 which portions of this exhibit are relevant and relevant as
24 to which issue. Ruling deferred on 342.

25 MR. SCHAUBLE: Your Honor, I enter into evidence

1 343. Again, this is another pleading largely identical to
2 the first one, except one was -- the first one was
3 originally misfiled, directed to the Commission. And, then,
4 virtually the same pleading was then directed to the
5 presiding Judge, I believe, 13 days later.

6 CHIEF JUDGE CHACKIN: Well, what do we need both
7 of them for?

8 MR. SHAINIS: That would be my objection. They
9 are identical pleadings, except for the date.

10 MR. SCHAUBLE: Your Honor, the fact that the same,
11 we believe this is a statement that continues
12 misrepresentations to the Commission, the fact that it was
13 repeatedly propounded. It was propounded twice --

14 MR. SHAINIS: Wait a minute. Your Honor, what
15 happened was, my understanding is the pleading by former
16 counsel representing Mr. Kay was misdirected and filed with
17 the Commission. It was then resubmitted, appropriately and
18 properly, with the Judge.

19 MR. SCHAUBLE: No, there was a new affidavit
20 prepared by Mr. Kay with respect to this.

21 MR. KELLER: That was just to facilitate the
22 refiling.

23 MR. SHAINIS: Right. If there is a
24 misrepresentation -- and I'm not conceding that there is --
25 it's not a repeated misrepresentation, so for the purpose

1 that the Commission would acknowledge, because the same
2 pleading was submitted in a different body of the
- 3 Commission. I mean, that's really stretching it.

4 CHIEF JUDGE CHACKIN: I'm not going to receive 342
5 and with respect to 343, the ruling is deferred, so that you
6 could tell me which portions are relevant and which issues.

7 Clearly, this was a situation where a pleading was
8 misdirected and counsel directed it to the right party.

9 (The document referred to,
10 having been previously marked
11 for identification as Bureau
12 Exhibit 342, was rejected from
13 evidence.)

- 14 MR. SCHAUBLE: Your Honor, we would also point out
15 that Mr. Kay twice with respect to the correctness of the
16 facts in both pleadings. This is not an instance --

17 MR. SHAINIS: It's the same set of facts, though.

18 CHIEF JUDGE CHACKIN: I'm satisfied. If a
19 misrepresentation was made, it was made in one instance.
20 It's not two separate misrepresentations. It was merely a
21 situation where a pleading was misdirected, and then it was
22 directed to the right party.

23 MR. SCHAUBLE: Your Honor, at this time, I offer
24 Bureau Exhibit 344.

- 25 CHIEF JUDGE CHACKIN: Any objection.

1 MR. KELLER: Yes, Your Honor. I want to question,
2 first of all, the relevance of this document. The record,
3 assuming the document were to come in, which we don't
4 believe it should, the record will reflect that this is a
5 document that goes far beyond the scope of this proceeding.

6 Essentially what is at issue in this proceeding is
7 whether by virtue of the Radio System Management Agreement,
8 that is, Exhibit 340, whether or not Kay has an interest in
9 Sobel's stations that should have been disclosed, whether it
10 constitutes a transfer of control, etc.

11 The record will further reflect that that Radio
12 System Management Agreement relates solely and exclusively
13 to certain 800 megahertz stations licensed to Mr. Sobel. In
14 addition, Mr. Sobel also hold licenses for several 450
15 megahertz and 470 to 512 megahertz stations, and possibly
16 one or two 800 megahertz stations which the record will
17 further show have absolutely no connection with Mr. Kay
18 whatsoever, save and except that they may share the same
19 tower space in certain places, which is quite common in the
20 industry.

21 These two gentlemen are long time friends, long
22 time business associates. What Exhibit 344 is is simply an
23 agreement that is standard in all types of businesses, not
24 just the radio business, whereby in the event of Mr. Sobel's
25 death, untimely death, Mr. Kay will purchase all of Mr.

1 Sobel's business assets, including those 470 to 512
2 megahertz stations that Mr. Kay currently has nothing to do
3 with.

4 The purpose of that agreement is to relieve Mr.
5 Sobel's widow, who doesn't know anything about the radio
6 business, from having to deal with that. The agreement
7 provides that Mr. Kay will maintain a life insurance policy
8 to allow him to do that. I don't see that it really adds
9 anything to this proceeding. It, by and large, addresses
10 radio facilities that are not at all at issue in this
11 proceeding, and there's been no suggestion and I don't think
12 the record reflects that there's anything improper. I just
13 don't see how it's relevant.

14 MR. SCHAUBLE: Your Honor?

15 CHIEF JUDGE CHACKIN: Yes?

16 MR. SCHAUBLE: Mr. Kay made a categorical
17 representation here that he had no interest in any of Mr.
18 Sobel's stations or licenses. He didn't just qualify it or
19 limit it to 800 megahertz or a specific category. And, here
20 we have an agreement under which Mr. Kay has the right to
21 purchase these stations. This was never disclosed at the
22 time the pleading was filed with Judge Sippel and the
23 Commission. And, we believe this is indicative of a future
24 interest he had in Mr. Sobel's stations and licenses.

25 MR. SHAINIS: Your Honor, this does not establish

1 an interest, a present-day interest. If Mr. Kay would die
2 tomorrow, the subject matter of this agreement would not be
3 part of his gross estate. So, it's not an interest. It
4 would not be recognizable by the Commission as an interest,
5 based on this agreement.

6 MR. SCHAUBLE: Your Honor, he didn't limit it to
7 say I don't have any present interest. If you read what Mr.
8 Kay submitted, he -- you know, you have the impression that
9 he's had nothing to do with Marc Sobel, and we think this is
10 relevant as a future interest.

11 MR. KELLER: Your Honor --

12 CHIEF JUDGE CHACKIN: All right, the exhibit is
13 rejected. I don't see that it's relevant, to deal with some
14 future, indefinite point. We're dealing with present
15 interest. The testimony dealt with present interest.

16 (The document referred to,
17 having been previously marked
18 for identification as Bureau
19 Exhibit 344, was rejected from
20 evidence.)

21 MR. SCHAUBLE: No, it was not limited in that way.

22 MR. KNOWLES-KELLETT: It said any interest, Your
23 Honor.

24 CHIEF JUDGE CHACKIN: That's right.

25 MR. KNOWLES-KELLETT: And, I don't consider a

1 future interest an interest.

2 CHIEF JUDGE CHACKIN: It's not a future interest.

3 MR. KNOWLES-KELLETT: Yes, it is. It's the right
4 to purchase specific things -- contracts to purchase at a
5 specific price, assuming his debt. When Sobel dies, not if
6 Sobel dies, when Sobel dies. It's a binding contract --

7 CHIEF JUDGE CHACKIN: I disagree with that, and
8 I'm going to reject it. I don't see how it's relevant.
9 Because, it's possible that Kay could die first, you know.
10 It never could be entered into, never be executed.

11 MR. SCHAUBLE: Okay, finally, Your Honor, we offer
12 into evidence Bureau Exhibit 345. This is another database
13 record.

14 MR. KELLER: Is this something that was straggling
15 out of sequence?

16 MR. SCHAUBLE: We're putting our exhibits --
17 frankly, we were putting our exhibits together and noticed
18 we missed this one and we already had numbered the exhibits.
19 We just added this one onto the end.

20 CHIEF JUDGE CHACKIN: All right.

21 MR. KELLER: We have a standing objection to that.

22 CHIEF JUDGE CHACKIN: Right. I will receive
23 Bureau Exhibit 345, official notes. Let me ask you, Mr.
24 Schauble, the misrepresentation issue, as I understand it,
25 is grounded on the testimony of Mr. Sobel and Mr. Kay

1 concerning the nature of the Radio System Management
2 Marketing, it's an interest?

3 (The document referred to,
4 having been previously marked
5 for identification as Bureau
6 Exhibit 345, was received in
7 evidence.)

8 MR. SCHAUBLE: And, also, the prior oral
9 relationship they had.

10 CHIEF JUDGE CHACKIN: And, the oral relationship
11 that was finally put in writing with the agreement, is that
12 right?

13 MR. SCHAUBLE: It is also grounded upon their
14 representations.

15 CHIEF JUDGE CHACKIN: I understand that, but the
16 representation, whether or not it was a false
17 representation, in order to reach that point, you have to
18 make a determination whether this agreement, the oral
19 relationship, constituted an interest in Mr. Kay and Mr.
20 Sobel's stations, right?

21 MR. SCHAUBLE: Kay testified that he owned all of
22 Sobel's stations, so I don't know what you want.

23 CHIEF JUDGE CHACKIN: He testified that he owned
24 all of Mr. Sobel's stations?

25 MR. KNOWLES-KELLETT: He owns --

1 MR. KELLER: No, Your Honor.

2 MR. KNOWLES-KELLETT: -- all the physical
3 equipment of the stations.

4 CHIEF JUDGE CHACKIN: That's not the same as an
5 interest. What I'm saying is, to make a determination as to
6 whether there was a misrepresentation, whether the
7 concealment, intent to conceal or deceive the Commission is
8 predicated on a determination of whether this oral
9 relationship, later put in writing, constituted an interest
10 by Mr. Kay and Sobel's stations, isn't that right?

11 MR. SCHAUBLE: Your Honor, we believe we have
12 that. We believe we have very appropriate evidence on that
13 point, also. But, what --

14 CHIEF JUDGE CHACKIN: I understand that. What I'm
15 saying is, how do I make this determination of
16 misrepresentation without getting to the question of whether
17 it constituted an interest or not, and if I make that
18 determination that it did or did not constitute an interest,
19 how do I do so without avoiding evidence concerning the
20 nature of the interest, or the evidence in support of it.

21 MR. SCHAUBLE: Your Honor, we believe at one point
22 in the Sobel proceeding, Mr. Kay was asked, Mr. Kay
23 basically gave his definition of what an interest was, and
24 one of the things, he said a direct financial stake was an
25 interest, and we believe the evidence shows he had a direct

1 financial stake in these stations. As a matter of fact, Mr.
2 Sobel testified that he believes Mr. Kay had a direct
3 financial stake in these stations.

4 CHIEF JUDGE CHACKIN: Well --

5 MR. SCHAUBLE: And, you know, under --
6 broadcasting, when somebody makes a statement which they
7 know is false, that can lead to the conclusion that there's
8 the intent necessary for misrep or lack of candor.

9 CHIEF JUDGE CHACKIN: The question is, what is a
10 false statement? If I remember Mr. Kay and Mr. Sobel
11 testified, they didn't have an ownership interest, that Mr.
12 Kay did not have an ownership interest in Sobel's station.
13 Am I correct? That's what the affidavit said.

14 MR. SCHAUBLE: It didn't use the word ownership.
15 It said interest in Sobel's stations or license.

16 CHIEF JUDGE CHACKIN: Then, they testified that by
17 that, they meant there was no ownership interest. Am I
18 correct?

19 MR. SHAINIS: Yes.

20 MR. SCHAUBLE: In the license, without -- I don't
21 think there was ever any adequate explanation as to why the
22 affidavit said stations or licenses.

23 CHIEF JUDGE CHACKIN: Well, so the question is, we
24 get to the question of, clearly there was no ownership
25 interest. Mr. Kay does not have an ownership interest in

1 Sobel's license. There's no question about that, as far as
2 ownership goes.

3 MR. SCHAUBLE: No current ownership.

4 CHIEF JUDGE CHACKIN: Current ownership. So, the
5 question is whether or not --

6 MR. SCHAUBLE: He owns the equipment.

7 CHIEF JUDGE CHACKIN: -- we're dealing with
8 control, whether or not, under the terms of the management
9 agreement or the earlier oral relationship, whether or not
10 Kay exercised control over Sobel's stations. Isn't that
11 what we're dealing with?

12 MR. SCHAUBLE: I believe that's part of what we're
13 dealing with, Your Honor. There's also the matter that he
14 admitted, that Kay physically owns the equipment.

15 CHIEF JUDGE CHACKIN: I understand, but all that
16 goes to the question of control. I mean, this is not a
17 situation where A concealed ownership of the station, in
18 other words, where A had actually sold B the license or
19 transferred the license, and then the evidence showed that,
20 in fact, or A claimed he didn't transfer the license, and
21 the evidence showed that A, in fact, did transfer the
22 license.

23 He had an agreement, he signed something, here,
24 you have a station. Here, we're dealing with the question
25 of whether control constitutes an interest. Isn't that what

1 we're dealing with here?

2 MR. SCHAUBLE: I think, Your Honor, it would be
3 possible to have an interest in something without it rising
4 to the level of an unauthorized transfer of control. I
5 think, if anything, denial of interest was even broader than
6 if you say denied I controlled Sobel's station.

7 CHIEF JUDGE CHACKIN: Well, but we're talking
8 about interest here, we're talking about control. We're
9 talking about de facto control. He didn't have de jure
10 control, because he didn't own the station. They were owned
11 by Sobel.

12 The question we're dealing with is de facto
13 control and does that constitute an interest.

14 MR. KNOWLES-KELLETT: Well, he had an option to
15 buy --

16 CHIEF JUDGE CHACKIN: Under Intermountain, as you
17 say.

18 MR. KNOWLES-KELLETT: There's a question of de
19 jure control, Your Honor, because he had the option to buy
20 the station for \$100 at any rate.

21 CHIEF JUDGE CHACKIN: Well, he may have an option.
22 The fact you have an option, until you exercise it, you
23 don't have de jure control. An unexercised option is not de
24 jure control.

25 MR. KNOWLES-KELLETT: Okay, I stand corrected,

1 Your Honor.

2 CHIEF JUDGE CHACKIN: So, what we're dealing with
3 is de facto control. Is that right? So, I have to get, in
4 order to find out whether it's a misrepresentation, I have
5 to make a determination whether there's de facto control,
6 don't I?

7 MR. SCHAUBLE: That was stipulated earlier.

8 CHIEF JUDGE CHACKIN: Well, they didn't stipulate
9 it was de facto control.

10 MR. KNOWLES-KELLETT: Transfer of control.

11 MR. KELLER: No.

12 MR. SCHAUBLE: Well, they stipulated that there
13 was a finding --

14 CHIEF JUDGE CHACKIN: You see, Judge Sippel could
15 have made life simple if he'd said determine on the basis of
16 the evidence of whether or not there was de facto control
17 and whether there was a misrepresentation by Kay. But,
18 since he put in a factual issue, it seems to me there's no
19 way you could avoid the question of whether or not the
20 interest constituted de facto control.

21 MR. SCHAUBLE: Your Honor, if you're going to take
22 that view of the issue --

23 CHIEF JUDGE CHACKIN: Well, how else can I take a
24 view? It's de facto control we're talking about, isn't it,
25 whether or not there was an interest? It's not de jure

1 control.

2 MR. SCHAUBLE: We're going for their points of
3 interest, other than de facto control, Your Honor. If I
4 owned 20 percent of a station, I would not have de facto
5 control, however, I would have an interest in that station.

6 CHIEF JUDGE CHACKIN: But, we're not talking about
7 any ownership interest.

8 MR. SCHAUBLE: Twenty percent -- but there are
9 other possible interests than de facto control.

10 CHIEF JUDGE CHACKIN: What?

11 MR. KNOWLES-KELLETT: Well, 20 percent if he was a
12 general partner --

13 CHIEF JUDGE CHACKIN: The question is, what other
14 interests are we talking about in this case besides de facto
15 control?

16 MR. SCHAUBLE: His ownership of the equipment.

17 CHIEF JUDGE CHACKIN: That goes to de facto
18 control, does it not?

19 MR. SCHAUBLE: It would go to de facto control,
20 but we also think it's an interest in and of its own right,
21 also.

22 MR. KNOWLES-KELLETT: Well, option to purchase is
23 also. The fact that he's operating a station is also.

24 CHIEF JUDGE CHACKIN: But, that would also go to
25 de facto control, wouldn't it?

1 MR. SCHAUBLE: What we're trying to say, Your
2 Honor, is we don't believe you have to find de facto control
3 to find an interest. There is something less than de facto
4 control. There could be a cognizable interest in a station.

5 CHIEF JUDGE CHACKIN: Well, how do you define
6 interest?

7 MR. SCHAUBLE: Interest is any kind of ownership
8 or control of the station, in my opinion.

9 CHIEF JUDGE CHACKIN: All right, well, we concede
10 there's no ownership here.

11 MR. SCHAUBLE: Right.

12 CHIEF JUDGE CHACKIN: So, what's left is control.

13 MR. SCHAUBLE: Right, but it doesn't have to be de
14 facto control. De facto control would mean he could
15 exercise anything, you know.

16 CHIEF JUDGE CHACKIN: Well, these are all
17 interesting questions which we'll have to determine during
18 the course of the hearing. I just want to put you on notice
19 of these questions.

20 MR. SHAINIS: Your Honor, I wonder if I might ask
21 a question?

22 CHIEF JUDGE CHACKIN: Yes.

23 MR. SHAINIS: Will the hearing be at the
24 courthouse?

25 CHIEF JUDGE CHACKIN: I'm afraid so.

1 MR. KELLER: Is that bad?

2 CHIEF JUDGE CHACKIN: Well, it's not bad, I'll be
3 there. It's convenient for me.

4 MR. SHAINIS: I guess my question is, will the
5 hearing rooms be ready at that time?

6 CHIEF JUDGE CHACKIN: Oh, I'm sure they will be,
7 I'm sure they will be. Well, I won't get over there until
8 next Monday, but what I've been told, one hearing room is
9 definitely available. If it proves differently, then, of
10 course, we'll have to -- I'll let you know as soon as I can,
11 but my understanding is the rooms will be available.

12 MR. SHAINIS: Your Honor, we'd like to bring this
13 up now with you, and we touched upon it earlier. Right now,
14 the Sobel decision is on appeal.

15 CHIEF JUDGE CHACKIN: Yes.

16 MR. SHAINIS: You're going to be receiving
17 evidence on the transfer of control. Mr. Keller and I have
18 debated filing something with the Commission, asking them to
19 defer a ruling and waiting until you rule, so that they
20 would have a sense of it. If you reach a different
21 decision, they could then decide which way they want to go.
22 Otherwise, we and you may be spinning your wheels.

23 CHIEF JUDGE CHACKIN: Well, I don't understand how
24 this has any bearing on this case. Of course, you could
25 file anything with the Commission in the Sobel case, asking

1 them to defer a ruling, if you wish, until they're ready to
2 take up the initial decision in this case. But, that has no
3 bearing on this case.

4 If anything, we should proceed with this case, so
5 that the Commission can have both cases.

6 MR. SHAINIS: No, I understand that, and I'm not
7 suggesting that we hold off. I guess I was hoping to get
8 your blessing on doing that.

9 CHIEF JUDGE CHACKIN: Well, it's out of my
10 bailiwick. It's something for you to decide what to do, but
11 it's not unusual for cases to be decided on the basis of
12 evidence in another case. Issues like that have been framed
13 and determined on the basis of a decision reached in A,
14 whether or not the license should be revoked to B, what
15 effect it has, if any, on B.

16 MR. SHAINIS: Your Honor, we would think, if
17 anything, we'd want a decision from the Commission in the
18 Sobel proceeding promptly, because --

19 CHIEF JUDGE CHACKIN: Well, it may provide us some
20 insight as to what interest means. We'll just have to wait
21 and see. So, it might be beneficial in that respect, the
22 Commission. I don't know what you brought up in your
23 exceptions, whether you've argued interest.

24 MR. SHAINIS: I wasn't --

25 CHIEF JUDGE CHACKIN: Well, I don't know what

1 you've brought up, but there are certainly some arguments to
2 be made concerning what constitutes an interest and what
3 constitutes control, in light of some of what's going on in
4 the mass media area.

5 MR. SHAINIS: The other thing I'd like to bring up
6 is, the Bureau presents its case and presumably, they'll be
7 finished by January 11.

8 CHIEF JUDGE CHACKIN: I don't know when --

9 MR. SHAINIS: Somewhere on or around that time.
10 It doesn't make any difference, whenever they're finished.

11 MR. KNOWLES-KELLETT: We've discussed with them
12 a --

13 MR. SHAINIS: Whenever they're finished, they're
14 finished. If we don't feel that they've met their burdens,
15 do we orally then bring that up?

16 CHIEF JUDGE CHACKIN: No, you don't orally bring
17 it up. The Commission doesn't go with -- you put it in your
18 case and then -- I mean, you have a decision to make. If
19 you don't want to put in the evidence, you could do so.
20 But, you can't have a, you know, I can't think of the word,
21 you know. The Commission wants all the evidence in and then
22 you make a determination. The choice is yours whether you
23 want to put in evidence or not.

24 MR. SHAINIS: All right, in a civil proceeding,
25 for instance, if we made our motion and you disagreed --

1 CHIEF JUDGE CHACKIN: There's no such thing as a
2 motion to me. What you do is you file your initial, you
3 file your proposed finding and you argue, and then the Judge
4 issues a decision.

5 MR. SHAINIS: Okay.

6 CHIEF JUDGE CHACKIN: I mean, there's no such
7 precedent in Commission proceedings for a bifurcated
8 hearing, in which you make a motion that they make a prima
9 facie case and the Judge issues an initial decision. You
10 just don't have that animal in Commission proceedings,
11 administrative proceedings, as far as I know.

12 It's different when you go before a jury, I guess,
13 criminal proceeding. I know it applies to a criminal
14 proceeding, obviously, that you can move, that the party,
15 that Counts A, B, C should be thrown out. I don't know in a
16 civil proceeding --

17 MR. KELLER: Same thing in a civil proceeding.

18 CHIEF JUDGE CHACKIN: Is it true in a civil
19 proceeding? Well, it doesn't apply in an administrative
20 proceeding.

21 MR. SHAINIS: I mean, I guess we can move for
22 summary decision.

23 MR. SCHAUBLE: Your Honor, the record has to be
24 done before the hearing.

25 CHIEF JUDGE CHACKIN: I won't accept a motion for

1 summary decision. What you can do is decide to put in your
2 case or not put in your case. Or, maybe feel on the basis
3 of cross-examination, there's no need for you to put anymore
4 witnesses on. That's a choice you can make, but it's all up
5 to you.

6 In any event, we're not going to have a bifurcated
7 proceeding. I'll issue one initial decision based on
8 whatever evidence is received in this proceeding.

9 Now, as far as your witnesses are concerned, Mr.
10 Schauble, how are you going to, who's going to be your first
11 witness?

12 MR. SCHAUBLE: Mr. Kay, Your Honor.

13 CHIEF JUDGE CHACKIN: Mr. Kay? Are the parties
14 aware of that?

15 MR. SCHAUBLE: We've mentioned that.

16 CHIEF JUDGE CHACKIN: Who's your second witness?

17 MR. SCHAUBLE: Paul Oei.

18 CHIEF JUDGE CHACKIN: That's O-U-E?

19 MR. SCHAUBLE: O-E-I.

20 CHIEF JUDGE CHACKIN: And, your next witness?

21 MR. SCHAUBLE: Craig Sobel.

22 CHIEF JUDGE CHACKIN: All right, next witness?

23 MR. SCHAUBLE: Barbara, Barbara Ashenhowe.

24 CHIEF JUDGE CHACKIN: Who is she?

25 MR. SCHAUBLE: She's an employee of Mr. Kay.

1 CHIEF JUDGE CHACKIN: I see. Do you have to
2 subpoena any of these witnesses?

3 MR. SCHAUBLE: Yes, Your Honor. We intend to get
4 subpoenas to Your Honor this week.

5 CHIEF JUDGE CHACKIN: All right, anybody else?
6 Who's your next witness after that?

7 MR. SCHAUBLE: Roy Jenson, Your Honor.

8 CHIEF JUDGE CHACKIN: Who's he?

9 MR. SCHAUBLE: He's a former employee of Mr. Kay.

10 CHIEF JUDGE CHACKIN: All right.

11 MR. SCHAUBLE: Then, I believe next is Vincent
12 Cordaro.

13 CHIEF JUDGE CHACKIN: When is your expert witness
14 going to testify?

15 MR. SCHAUBLE: January 11, Your Honor.

16 CHIEF JUDGE CHACKIN: Oh, the expert witness is
17 January 11?

18 MR. SCHAUBLE: Yes. Then, after Mr. Cordaro, I
19 believe we have --

20 CHIEF JUDGE CHACKIN: Remember, we're just going
21 four days the first week, so we don't want to bring people
22 here if they're not going to testify.

23 MR. KNOWLES-KELLETT: The first week, we'll end
24 with Craig Sobel, Your Honor.

25 CHIEF JUDGE CHACKIN: All right, so we'll have --

1 all right.

2 MR. KNOWLES-KELLETT: That's what we anticipate.

3 MR. KELLER: Kay, Oei and Sobel?

4 CHIEF JUDGE CHACKIN: So, we'll have Kay, Oei and
5 Craig Sobel for the first week?

6 MR. SCHAUBLE: Correct.

7 CHIEF JUDGE CHACKIN: All right, and under the
8 circumstances, we'll deal with just those three witnesses.
9 And, the next week, you plan on Ashenhower, Jenson and
10 Cordaro?

11 MR. KNOWLES-KELLETT: Cordaro.

12 MR. SCHAUBLE: Cordaro, then Carla Pfeifer, Marc
13 Sobel.

14 MR. KNOWLES-KELLETT: Marc Sobel and Kevin
15 Hessman.

16 MR. KELLER: Is Pfeifer before Sobel?

17 MR. KNOWLES-KELLETT: Pfeifer is before Sobel.

18 MR. KELLER: You sure about that?

19 MR. KNOWLES-KELLETT: Well, we're not absolutely
20 certain of that.

21 CHIEF JUDGE CHACKIN: So, who comes after Carla
22 Pfeifer?

23 MR. KNOWLES-KELLETT: Did you put Marc Sobel
24 before or after Carla Pfeifer?

25 CHIEF JUDGE CHACKIN: Is it after Carla Pfeifer?

1 MR. SCHAUBLE: We believe so, Your Honor.

2 CHIEF JUDGE CHACKIN: All right.

3 MR. KNOWLES-KELLETT: That's something we were
4 tinkering with, and I apologize, I don't remember what
5 happened the end of last week.

6 CHIEF JUDGE CHACKIN: All right. You have one
7 more witness after that, you say?

8 MR. SCHAUBLE: Kevin Hessman.

9 CHIEF JUDGE CHACKIN: He's your expert witness?

10 MR. SCHAUBLE: No, he's --

11 CHIEF JUDGE CHACKIN: He's a former employee?

12 MR. KELLER: He's that New Year's week.

13 CHIEF JUDGE CHACKIN: And, one more witness after
14 that?

15 MR. SCHAUBLE: And, then the expert, which we
16 anticipate will be --

17 MR. KNOWLES-KELLETT: On January 11, it's Tom
18 Gerrard.

19 MR. SCHAUBLE: It's William Thomas, W.T. Gerrard.

20 CHIEF JUDGE CHACKIN: All right. And, do you
21 think you can get all these people on during those
22 abbreviated four days, from Ashenhowe, Jenson, Cordaro and
23 Pfeifer?

24 MR. KNOWLES-KELLETT: Your Honor, it really
25 depends very much on the extent of their cross-examination.

1 CHIEF JUDGE CHACKIN: Well, how long is your
2 direct examination going to be?

3 MR. KNOWLES-KELLETT: I think we laid it all out
4 in our trial brief, our best estimate. I think that we're
5 hoping this works, but it might be safer to move Hessman
6 back to the 11th.

7 MR. SCHAUBLE: We'll have to see how it goes, I
8 think, Your Honor, before we can make any firm --

9 MR. KELLER: Well, isn't that firm, so we can make
10 arrangements?

11 MR. SCHAUBLE: Pardon?

12 MR. KELLER: That's not something you can change
13 at the last minute, is it, or no?

14 MR. KNOWLES-KELLETT: We can change pretty
15 regularly at the Government rate on airlines.

16 MR. KELLER: Okay.

17 MR. KNOWLES-KELLETT: But, you know, it's a little
18 bit of a problem for him on New Year's Eve, if we're not
19 going to call him --

20 CHIEF JUDGE CHACKIN: If we finish a day early,
21 it's all right. Considering it's New Year's Eve, I'm not
22 going to -- we'll do it on the 8th, whoever we have left.

23 MR. KNOWLES-KELLETT: Okay, we're assuming on the
24 11th. Would that be okay to move Hessman to that point?

25 MR. SCHAUBLE: We'd be finishing up the end of the

1 day on the 11th, then.

2 CHIEF JUDGE CHACKIN: Sure, there's no problem
3 with that. I don't want to inconvenience anybody to come
4 down here if they're not going to testify. So, I'd rather
5 be more generous, considering the holidays. So, if we do
6 have a little extra time, I'm sure nobody will mind leaving
7 early.

8 (Pause.)

9 CHIEF JUDGE CHACKIN: Why don't we go off the
10 record?

11 (Discussion held off the record.)

12 MR. KELLER: I'd like to raise a question, even
13 without the shuffling you just did. We talked earlier
14 about, I believe, Exhibits 281 through 285, which I believe
15 you're withholding a ruling until you hear from the
16 witnesses. These are the database records?

17 CHIEF JUDGE CHACKIN: That's right.

18 MR. KELLER: What I'm going to refer to is March,
19 '95 data. It comes in two flavors. One are these exhibits,
20 these disputed Exhibits 281 through 285. The other would be
21 the Kay screen shot data. You're withholding a ruling,
22 which, that's fine, but the people, as I understand it, who
23 are going to authenticate these records, are Craig Sobel and
24 Vince Cordaro, who will not be testifying under any sequence
25 here until after James Kay.

1 CHIEF JUDGE CHACKIN: That's correct.

2 MR. KELLER: So, I guess I have a little bit of a
3 problem with Kay being cross-examined about these records
4 before they've been authenticated, and I would suggest that
5 to the extent the Bureau needs to question Kay regarding
6 March '95 data, they rely on the data that Mr. Kay
7 submitted, rather than the Cordaro database records.

8 CHIEF JUDGE CHACKIN: Well, what I want the Bureau
9 to do is, I want the Bureau to compare the two data and
10 determine whether there are any discrepancies or any
11 incompleteness in Kay's data that you need for your records.
12 And, try to get that information in through Kay, if you can,
13 and possibly avoid any testimony by Cordaro or Sobel, if
14 that's possible. And, we'll just see what happens. Perhaps
15 we won't need Cordaro and Sobel and we won't need those
16 exhibits.

17 MR. KNOWLES-KELLETT: We anticipate possibly
18 having a problem with that, but --

19 CHIEF JUDGE CHACKIN: What problem?

20 MR. KNOWLES-KELLETT: For one thing, Your Honor,
21 the convenience thing, in the exhibit where Kay represented
22 in response to his 308(b), there is no day for which it's
23 convenient for me to produce these records --

24 MR. SHAINIS: That was a letter signed by his
25 counsel.

1 MR. KNOWLES-KELLETT: And attested to by Kay.

2 MR. SHAINIS: Right, that was signed by his
3 counsel.

4 MR. SCHAUBLE: But, it was attested to by him.

5 CHIEF JUDGE CHACKIN: Wait a minute, wait a
6 minute.

7 MR. SHAINIS: You're taking it out of context.

8 CHIEF JUDGE CHACKIN: Well, in any event, whatever
9 the case is, as far as the substance is concerned, the
10 substance of the exhibits, if you want to bring Mr. Sobel
11 in, Mr. Cordaro, for the simple purpose of saying how long
12 it took him to prepare the exhibit, that's one thing.

13 But, as far as the substance in the exhibits
14 themselves, if we can do that by Mr. Kay, then we can avoid
15 going through the other exhibits and cross-examination as to
16 the other exhibits.

17 MR. KNOWLES-KELLETT: There may be stipulations we
18 could reach to avoid bringing Sobel, as well.

19 CHIEF JUDGE CHACKIN: All right. Now, as far as
20 Kay is concerned, I assume Kay is still going to put in
21 most of all their case in writing, is that your position, or
22 are you going to put in oral testimony, as well?

23 MR. SHAINIS: Your Honor, right now, what we are
24 proposing to do with Mr. Kay himself is, have his testimony
25 reduced to writing, his direct case.

1 As far as, obviously, our expert, we have two
2 experts, I believe, they will be reduced to writing. Other
3 witnesses for Kay, I don't believe will be reduced to
4 writing, though that is not carved in stone, yet, a certain
5 character witness for Mr. Kay.

6 CHIEF JUDGE CHACKIN: All right, so you're going
7 to put in sworn statements?

8 MR. SHAINIS: For Mr. Kay, yes.

9 CHIEF JUDGE CHACKIN: For any other witnesses, who
10 are you putting in for?

11 MR. SHAINIS: We may actually -- we will attempt
12 to do that. I just think it facilitates the hearing by
13 doing that.

14 CHIEF JUDGE CHACKIN: Well, we'll see. And, the
15 Bureau, I assume, are we going to have a situation here
16 where the Bureau -- are you going to present all these
17 witnesses that are going to be made available for cross-
18 examination, or are you assuming that some of this sworn
19 testimony can come in without the need for cross-
20 examination?

21 MR. KELLER: There may be some, but I guess what
22 we would do in that situation is provide it to the Bureau
23 sufficiently in advance, so that they can let us know.

24 CHIEF JUDGE CHACKIN: Okay.

25 MR. KELLER: Then, if the Bureau calls them for

1 cross-examination, we'll produce them and/or subpoena them.

2 CHIEF JUDGE CHACKIN: All right, so the Bureau
3 should, as soon as they can, make a determination whether
4 they need to cross-examine? They'll indicate which
5 witnesses they intend to present or make available for
6 cross-examination, but there may be some others, and you'll
7 indicate which ones that you feel it's possible you won't
8 need cross-examination, and they can indicate whether or not
9 they want to cross-examine those witnesses?

10 MR. KELLER: Well, my understanding of that was
11 the January 4 date applied to experts, not to --

12 MR. KNOWLES-KELLETT: It goes to all written
13 testimony.

14 CHIEF JUDGE CHACKIN: I think it applies to all
15 your witnesses, all your written material, not just your
16 expert. All your written material is January 4.

17 As I say, you have the option of putting on an
18 oral case, if you want. But, if you want to put in a
19 written case or portions of it, January 4 is the date.

20 MR. KELLER: Very well.

21 CHIEF JUDGE CHACKIN: And, then, the Bureau can
22 indicate certainly, what is January 4, a Monday or a
23 Tuesday?

24 MR. KNOWLES-KELLETT: Monday.

25 MR. SCHAUBLE: Monday.

1 CHIEF JUDGE CHACKIN: Certainly by the end of the
2 week, which witnesses you intend to cross-examine if, to the
3 extent that they indicate their witnesses don't need to be
4 cross-examined. Perhaps character witness, I don't know.

5 And, as far as character witnesses are concerned,
6 where are they located?

7 MR. SHAINIS: Where are they physically located?

8 CHIEF JUDGE CHACKIN: Yes?

9 MR. SHAINIS: California.

10 CHIEF JUDGE CHACKIN: Now, I don't know who these
11 character witnesses are, but let me put it this way. As far
12 as character witnesses --

13 MR. SHAINIS: Let me backtrack. When I said
14 character witnesses, it was actually -- it's not necessarily
15 -- it's dealing in the sense of reputation in the community.
16 Some of the Bureau's witnesses, for dissembling lack of
17 voracity --

18 CHIEF JUDGE CHACKIN: Well, that's a different
19 situation. I thought it was straight character witnesses
20 where you use the speakerphone, but now we have something
21 else different.

22 MR. SHAINIS: I understand --

23 CHIEF JUDGE CHACKIN: So, all right. You'll
24 notify Kay certainly by the end of that week by fax and also
25 by phone and send me a fax as to which witnesses you want

1 for cross-examination?

2 MR. SCHAUBLE: Certainly, Your Honor.

3 MR. SHAINIS: Your Honor, the other matter is,
4 since the Bureau has not subpoenaed any witnesses yet and I
5 hope I'm wrong on this, but I anticipate the Bureau is going
6 to have problems serving subpoenas on some of their
7 witnesses.

8 If that is the case, I'm assuming we still don't
9 have to put on our case until the Bureau has finished?

10 CHIEF JUDGE CHACKIN: That's correct.

11 MR. SHAINIS: All right.

12 CHIEF JUDGE CHACKIN: Once the Bureau rests, then
13 you put on your case. Not before. All right?

14 MR. SCHAUBLE: Understood, Your Honor.

15 CHIEF JUDGE CHACKIN: All right, then we'll be in
16 recess, then, until January 21.

17 MR. SCHAUBLE: December?

18 CHIEF JUDGE CHACKIN: No, no, January -- December
19 21. You're right.

20 (Whereupon, at 3:35 p.m., the hearing was
21 recessed until December 21, 1998.)

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 94-147

CASE TITLE: In Re: JAMES A. KAY, JR.

HEARING DATE: November 30, 1998

LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:

11/30/98



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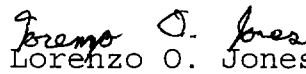
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